

**USDA Office of the General Counsel – USDA Departmental Administration/Office
of Human Resources Management**

**Inter-Office Working Arrangement
On**

**The Protocol for Requesting OGC Assistance for Third Party
Labor Relations Proceedings**

This document sets forth the procedures and protocol to be used by USDA Human Resources Management offices and the Office of the General Counsel for requesting and responding to requests for OGC assistance in third party labor relations proceedings.

Background

The USDA Office of the General Counsel (OGC) provides an array of legal services for the Secretary and Departmental Administrators within USDA Offices and Mission Areas, including representing the Agency in administrative and judicial forums. Attorneys in the General Law Division and OGC Field Offices sometime perform representation functions in administrative proceedings in employment law and labor-management relations cases. Typically, OGC's involvement has been limited to cases where significant Departmental interests are at stake. Normally, agency representation functions are performed by Human Resources (HR) Specialists in Labor or Employee Relations. Whereas the relative involvement by OGC Attorneys and HR Specialists in labor relations litigation is not expected to change significantly, there is a recognized need to establish a formal protocol to determine when direct OGC involvement is warranted.

DA/OHRM and OGC Interests

This working arrangement is expected to meet the following interests:

- ❖ Provide Labor Relations (LR) practitioners in USDA Offices and Mission Areas access to USDA OGC litigation expertise.
- ❖ Protect the interests of the Department and the Secretary in LR litigation.
- ❖ Maintain in-house LR litigation expertise and capacity within Mission Areas.
- ❖ Establish a common understanding Departmentwide when OGC assistance and involvement in LR litigation is appropriate.
- ❖ Wisely allocate limited OGC resources.
- ❖ Provide developmental opportunities for LR practitioners.

- ❖ Meet employment law career development interests of OGC attorneys.

Protocol

1. Labor-Management Relations Proceedings for which OGC Assistance may be available:

- a. Unfair Labor Practice Hearing and filings of exceptions to decisions by the Federal Labor Relations Authority (FLRA).
- b. Arbitrations and filings of exceptions to arbitration awards.
- c. Representation hearings before the FLRA.
- d. Hearings or mediation-arbitration proceedings before the Federal Service Impasses Panel (FSIP).

2. Requesting OGC Assistance

- a. Direct involvement by OGC in labor-management proceedings will be limited to those listed in 1.a – d. above, and where one or more of the following criteria are evident as determined by OGC:
 - 1) **Significance of issues in dispute**; i.e., proceedings involving issues where there is high potential liability or exposure by the USDA in terms of direct costs, establishment of adverse legal precedent, or significant effect on mission accomplishment.
 - 2) **Senior USDA Official(s) decision or action at issue**; i.e., disputes which call into question decisions or actions by high-ranking USDA officials, especially those involving agency policy or having widespread workforce implications.
 - 3) **Litigation strength needed**; i.e., significant proceedings where it is evident that a favorable outcome for the Department will depend on trial or litigation skills available from OGC.
- b. Requests for OGC assistance should be made by a senior level agency manager (e.g. administrator, regional program manager, etc.) in concert with the unit's Human Resources Management Director and addressed to either the Assistant General Counsel, General Law Division, for cases in the Washington, DC, metropolitan area, or to the OGC Regional Attorney in the same service area of the USDA office seeking assistance. Requests should clearly address applicable criteria, provide the name of a contact person knowledgeable of the dispute, and provide sufficient time for OGC to evaluate the request. Failure to submit a

timely request, regardless of the case's significance, will likely result in a decision by OGC to decline rendering assistance.

3. OGC Assistance

- a. A decision whether OGC will assist the USDA Office or Mission Area in the role of agency representative will be made in a timely manner. When assistance is declined, OGC will provide a brief explanation for its decision. When OGC agrees to represent the agency, administrative details and logistical arrangements, including any reimbursable costs (e.g., travel) will be made between OGC and the requesting unit. It is expected the requesting unit will provide one or more technical representatives to assist the OGC attorney throughout the proceeding.
- b. The protocol contained in this memorandum does not preclude USDA Offices or Mission Area Human Resources Management staffs from informally contacting OGC to discuss labor-management relations matters or seek legal advice. Depending on the circumstances and the nature of advice being sought, OGC may ask for a written request.

/s/ *Nancy S. Bryson*

Nancy Bryson
General Counsel

/s/ *Lou Gallegos*

Lou Gallegos
Assistant Secretary for
Administration

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